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## BY HAND

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423

ENTERED  
Office of Proceedings

JAN 18 2013

Part of  
Public Record

January 18, 2013



Re. Finance Docket No. 32760, Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company – Control and Merger – Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp. and The Denver and Rio Grande Western Railroad Company

Dear Ms. Brown.

I am writing on behalf of Union Pacific Railroad Company ("UP") in response to letters filed on Friday, January 11, 2013, by E&J Gallo Winery ("Gallo") and Cal Freight. The letters were filed in support of a petition filed by BNSF Railway ("BNSF") and G3 Enterprises ("G3") shortly before the hearing in this matter on Tuesday, January 15.

At the hearing, UP objected to those late-filed, unverified letters and stated that it was contemplating seeking a protective order from the Board so that it could respond fully to the factual assertions they contained. However, Chairman Elliott indicated that such a response seemed unnecessary.

Accordingly, rather than protract this proceeding by seeking a protective order and submitting additional verified statements, UP will complete its objection to the Board's admission of such untimely filings with this letter. If the Board were to accept the January 11 letters as part of the record, we respectfully request that UP be allowed an opportunity to respond briefly to the factual claims contained in the letters.

UP does not object to shipper support letters – if submitted in a timely manner as part of the orderly development of a record for the Board's consideration. UP does object to the January 11 letters as a belated attempt to submit new evidence that deprives UP of an opportunity to respond. The letters were filed less than two work days before a hearing.

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Yet, neither Gallo nor Cal Freight attempted to justify waiting more than four months after the BNSF-G3 Petition, and 36 days after the hearing notice, before making their views known on a matter they claim is of critical importance to them. The timing demonstrates no respect for the Board's procedures and no regard for due process.

If the Board were to consider the representations in the letters, then it should allow UP an opportunity to reply. Our proffer of evidence follows

In response to Gallo's claims that G3's closed status at Rogers leaves Gallo unable to use G3's facility to ship boxcars "at rates and service levels comparable to those currently available from [its] Modesto warehouse located on the M&ET Railroad" and places Gallo "at a significant competitive disadvantage," UP would show, among other things:

- UP can efficiently move Gallo's traffic from G3's Rogers facility to each of Gallo's seven regional distribution centers.
- UP currently moves traffic to Gallo's Kansas City and Scranton distribution centers that originates at Gallo's Modesto facility on the Modesto & Empire Traction Company.
- UP has quoted single-line rates to Gallo for moving traffic from G3's Rogers facility that are the same as the rates UP quoted for traffic from Gallo's Modesto facility to Kansas City, Scranton, and other Gallo distribution centers.
- Gallo never asked UP about the rates or service that UP could offer for interline routes with BNSF from Rogers.

In response to Cal Freight's claims about increases in UP rates and the supposed "competitive disadvantage when shipping boxcars from the G3 site," UP would show, among other things:

- Cal Freight has shipped traffic from G3's Rogers facility since 2002, and it never tried to use reciprocal switching at Rogers nor asked UP whether the facility was open to reciprocal switching.
- Cal Freight's claim about UP rate increases is not entirely clear, but UP did not increase Cal Freight's boxcar rates by \$600, or anything near that amount, after removing Procter & Gamble from UP's Reciprocal Switching Circular.

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- Cal Freight would not need to transload goods from G3's Rogers facility if it wanted to obtain BNSF service. Cal Freight moves goods to G3's facility by truck, and it could simply truck the goods instead to a nearby warehouse served by the Modesto & Empire Traction Company. Alternatively, Cal Freight could request that UP establish interline rates for traffic moving to destination served exclusively by BNSF.

If the Board concludes that it would be helpful for UP to provide the information summarized above in the form of verified statements, please contact the undersigned.

Sincerely,



Michael L. Rosenthal  
*Counsel for Union Pacific Railroad  
Company*

cc: Adrian L. Steel, Jr.  
Jolene A. Yee  
Parties of Record